

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENCOMPASS INSURANCE COMPANY OF
MASSACHUSETTS,

Plaintiff,

vs.

JOSEPH D. GIAMPA, FREDERICK T.
GIAMPA, ADVANCED SPINE CENTERS,
INC., d/b/a FIRST SPINE REHAB, FUTURE
MANAGEMENT CORPORATION, FUTURE
MANAGEMENT BUSINESS TRUST,
EDWARD KENNEDY, BRIAN J.
CULLINEY, D.C. and JENNIFER
McCONNELL, D.C.

Defendants.

Civil Action No. 1:05-cv-11693-RCL

MOTION TO COMPEL DEPOSITION OF REBECCA MORALES

NOW COMES the plaintiff, Encompass Insurance Company of Massachusetts (hereinafter "Encompass"), pursuant to Fed. R. Civ. P. 37 and Local Rule 37.1 and respectfully requests that this Honorable Court enter an Order COMPELLING the Deposition of Rebecca Morales.

On January 30, 2007, through counsel, plaintiff forwarded correspondence to Belesi & Conroy inquiring as to whether Attorneys Conroy or Kurtz could accept service on behalf of Rebecca Morales. The January 30th correspondence enclosed a deposition subpoena commanding Morales' appearance at deposition on March 7, 2007. Attorney Conroy agreed to accept service on behalf of Morales on February 19, 2007. By agreement of the parties, Ms. Morales' deposition was continued until April 10th. Attorney Conroy requested a further continuation of Ms. Morales' deposition.

On or about May 2, 2007, Attorney Conroy contacted ARMS¹ (the defendants' current billing company) requesting that ARMS allow Ms. Morales to appear for deposition on May 3, 2007. Apparently, ARMS agreed. Attorney Conroy later contacted Smith & Brink, P.C. wherein the parties agreed to conduct Warren Feretti's deposition in lieu of Ms. Morales' deposition. At no point did Encompass (1) subpoena Ms. Morales for deposition on May 3, 2007; or (2) notice Ms. Morales for deposition on May 3, 2007. Further, at no time was Encompass aware of Fireman & Associates, LLP's representation of Ms. Morales. Notwithstanding the foregoing, Attorney Conroy apparently failed to notify ARMS, Fireman & Associates and/or Ms. Morales that her deposition had been continued.

At some point during Mr. Feretti's deposition, Attorney Francis A. Gaimari purportedly appeared with "his client" Rebecca Morales for deposition.² Attorney Gaimari later sent correspondence indicating that Ms. Morales had satisfied her obligation to appear for deposition and would not further appear absent a court order.

The plaintiff seeks an Order compelling the Deposition of Rebecca Morales within ten (10) days of this Court's Order. Moreover, pursuant to Fed. R. Civ. P. 37(a)(4)(A), plaintiff requests that it be awarded costs in connection with the drafting and filing of the instant matter. Clearly, the defendants' counsel (Attorney Conroy and Attorney Giamari) are solely responsible for wasting this Court's (and Encompass') time in addressing such trivial discovery squabbles. As grounds for this Motion, Encompass states that it anticipates that the testimony of Ms. Morales will provide further support for plaintiff's affirmative allegations of insurance fraud contained in its Complaint.

¹ Interestingly, ARMS is owned by the defendants' counsel, Robert Fireman, in connection with related RICO litigation pending in the Middlesex Superior Court, Safety Ins. Co. v. Joseph Giampa, et. al., C.A. No. 2007-00679.

² Attorney Gaimari is an associate at Fireman & Associates and represents the instant defendants Joseph D. Giampa, Frederick T. Giampa, Edward Kennedy and the corporate entities in related litigation, Safety Ins. Co. v. Joseph D. Giampa, et al., Middlesex Superior Court, C.A. No. 2007-00679.

WHEREFORE, for all the foregoing reasons, plaintiff, Encompass Insurance Company, respectfully requests an Order COMPELLING the appearance of Rebecca Morales for her properly noticed deposition within ten (10) days. Further, Encompass requests that this Honorable Court award all reasonable fees and costs associated with drafting, filing and arguing the instant matter.

Respectfully submitted,
Encompass Insurance Company,
By its attorneys,

/s/ Nathan A. Tilden

Richard D. King, Jr., BBO#638142
Nathan A. Tilden, BBO#647076
Michael W. Whitcher, BBO#663451
SMITH & BRINK, P.C.
122 Quincy Shore Drive
Quincy, Massachusetts 02171
(617) 770-2214

Dated: May 31, 2007

Certificate of Service

I, Nathan A. Tilden., hereby certify that on this 31st day of May, 2007, this document was filed through the CM/ECF and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

The foregoing documents have also been sent via first-class mail, postage pre-paid direct to:

Francis A. Gaimari, Esquire
Fireman & Associates, LLP
145 Rosemary Street, Suite H-2
Needham, Massachusetts 02494

____/s/ Nathan A. Tilden____